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10/076,346	02/19/2002	Akira Takano	F05-138810M/ARK	1374

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EXAMINER

GUTMAN, HILARY L

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 08/26/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/076,346

Applicant(s)

TAKANO ET AL.

Examiner

Hilary Gutman

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-- Th MAILING DATE of this communication app ars on th cover sheet with the corr spondence addr ss --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-9,13-19 and 21-24 is/are rejected.
- 7) ☒ Claim(s) 3,4,6,10-12,20 and 25-28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Claim Objections

1. Claims 25-28 are objected to because of the following informalities: on line 1, "said mounting said" should perhaps be "said mounting of said". Appropriate correction is required.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 22 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 21.
4. Claim 24 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 23.

When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

With regard to the intended use limitations of claims 21-24, specifically, "thereby minimizing gaps between said steering support beam, said blower unit" and the lower or second panel (claims 21 and 23) and "thereby improving accuracy of fixing said blower unit to said vehicle body" (claims 22 and 24), these add no structural details to the claims.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 5, 7, 13-15, 17-19, and 21-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Derleth et al.

For claims 1 and 7, Derleth et al. disclose a blower unit mounting structure (as seen in the figures) comprising: an instrument panel 10 including an upper panel 60 and a lower panel 98 that are vertically divided along a transverse direction of a vehicle body; and at least a steering support beam 72 and a blower unit 20 assembled to the lower panel to form a unitized component, wherein the upper panel is attached to the vehicle body, wherein the unitized component is mounted on the vehicle body.

The limitation that the unitized component is mounted on the vehicle body "before the upper panel is mounted on the vehicle body" is a process limitation. It should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

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For claims 5 and 15, Derleth et al. disclose a method for mounting blower unit comprising: preparing an instrument panel 10 including an upper panel 60 and a lower panel 98 that are vertically divided along a transverse direction of a vehicle body; forming a unitized component by assembling at least a steering support beam 72 and a blower unit 20 to the lower panel; and mounting the unitized component and the upper panel on the vehicle body.

With regard to the intended use limitations of claims 21, 22, 23, and 24, these add no structural details to the claims and are not given weight when interpreting the scope of the claims. It should be noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

7. Claims 1-2, 5, 7-8, and 13-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Lindberg et al.

For claims 1 and 7, Lindberg et al. disclose a blower unit mounting structure (as seen in the figures) comprising: an instrument panel 30 including an upper panel 248 (Figure 13) and a lower panel, generally 256, 258 (Figure 13) that are vertically divided along a transverse direction of a vehicle body; and at least a steering support beam 50 and a blower unit 56 assembled to the lower panel to form a unitized component, wherein the unitized component is mounted on the vehicle body.

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The limitation that the unitized component is mounted on the vehicle body "before the upper panel is mounted on the vehicle body" is a process limitation. It should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

Lindberg et al. further comprises a front bulkhead 40 including a vertical wall surface with an opening 86, wherein a duct of the blower unit is connected to the opening for taking outside air into the blower unit.

For claims 5 and 15, Lindberg et al. disclose a method for mounting blower unit comprising: preparing an instrument panel 30 including an upper panel 248 and a lower panel, generally 256, 258 (Figure 13) that are vertically divided along a transverse direction of a vehicle body; forming a unitized component by assembling at least a steering support beam 50 and a blower unit 56 to the lower panel; and mounting the unitized component and the upper panel on the vehicle body.

With regard to the intended use limitations of claims 21, 22, 23, and 24, these add no structural details to the claims and are not given weight when interpreting the scope of the claims. It should be noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art.

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See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

8. Claims 7 and 9 are rejected under 35 U.S.C. 102(e) as being anticipated by Lorenz et al.

For claim 7, Lorenz et al. disclose a blower unit mounting structure comprising: an instrument panel 1 including an upper panel 2, 4, 5 and a lower panel 3 that are vertically divided along a transverse direction of a vehicle body; and at least a steering support beam 43 and a blower unit 17 assembled to the lower panel to form a unitized component, wherein the unitized component is mounted on the vehicle body.

Lorenz et al. further comprises a toe board 75 having a recessed portion 76, 77.

Allowable Subject Matter

9. Claims 3-4, 6, 10-12, 20 and 25-28 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 21-28 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's arguments filed 6/30/2003 with respect to claims 1-20 have been fully considered but they are not persuasive. A response to these arguments is set forth below:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the steering

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support beam “structurally supporting a steering system”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the argument that Derleth does not disclose, teach, or suggest a steering support beam and blower unit being assembled to the lower panel to form a unitized component, the examiner disagrees and believed that when the components are assembled together they can indeed form a unitized component.

In response to applicant's argument that the Derleth reference fails to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a structure “for mounting the blower upon” and the air conditioning system and crossmember thereon) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the part 98, the examiner believes this can be interpreted as a lower panel.

With regard to the Derleth reference and the limitation that the unitized component is mounted on the vehicle body “before” the upper panel is mounted, the examiner would like to point out that this is a process limitation. It should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

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Derleth clearly teaches and suggests mounting all of the components to the vehicle body. This encompasses the limitations of mounting the unitized component on the vehicle body and mounting the upper panel on the vehicle body.

With regard to the Lindberg reference, the components thereof are clearly attached or assembled together either directly or indirectly.

In addition, the components 256, 258 which make up the lower panel are clearly shown as and considered by the examiner to be “structures” despite the applicant’s interpretation.

In response to applicant's argument that the Lindberg reference fails to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., a “structure” for mounting and structurally supporting the blower upon and steering support column to) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With regard to the Lindberg reference and the limitation that the unitized component is mounted on the vehicle body “before” the upper panel is mounted, the examiner would like to point out that this is a process limitation. It should be noted that the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (MPEP 2113).

With regard to Lorenz, the support beam and blower unit components are clearly assembled together as a unitized component, as broadly claimed and interpreted, and directly or indirectly assembled to the second panel.

Therefore, for the reasons stated above, the examiner submits that all of the rejections of the previous office action were proper and will hereby be maintained in this office action.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references show other blower unit mounting structures similar to that of the current invention.

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hilary Gutman whose telephone number is 703-305-0496. The examiner can normally be reached on M-F 7:30am-4pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 703-308-3102. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

14. Any response to this final action should be mailed to:

Box AF

Assistant Commissioner for Patents

Washington, D.C. 20231

or faxed to:


(703)305-3597, (for formal communications; please mark "EXPEDITED
PROCEDURE")

or:

(703)308-3297, (for informal or draft communications, please clearly label
"PROPOSED" or "DRAFT").

hlg

August 20, 2003


STEPHEN T. GORDON
PATENT EXAMINER